

Title 38: WATERS AND NAVIGATION

Chapter 5: GENERAL PROVISIONS RELATING TO RIVERS AND STREAMS

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Maine Revised Statutes
Title 38: WATERS AND NAVIGATION
Chapter 5: GENERAL PROVISIONS RELATING TO RIVERS AND STREAMS

Subchapter 1: MILLS AND DAMS
Article 1: ERECTION AND FLOWAGE RIGHTS
Subarticle 1: GENERAL PROVISIONS

§611. OWNER OR MORTGAGEE IN POSSESSION LIABLE FOR ACTS OF TENANTS

The owner or mortgagee in possession, as well as any tenant, of any mill used for manufacturing lumber is liable for the acts of the tenant in unlawfully obstructing or diverting the water of any river or stream by the slabs or other mill waste from that mill, but no action may be maintained without a demand of damages, at least 30 days prior to its commencement. Such an unlawful obstruction or diversion by the tenant shall terminate, at the election of the owner or mortgagee and on written notice to the tenant, the tenancy. [1987, c. 769, Pt. A, §179 (RPR).]

SECTION HISTORY

1983, c. 359, §2 (NEW). 1985, c. 746, §28 (AMD). 1987, c. 769, §A179 (RPR).

§612. STREAMS FORMING STATE BOUNDARY

This chapter applies to mills and dams erected upon streams forming the boundary line of the State although a part of the dam is not in the State. The rights and remedies of all parties concerned shall be ascertained and determined as if the whole of such streams were in the State. This chapter shall not apply to mills and dams erected upon streams whose waters ultimately reach the ocean at a point wholly outside the territorial limits of the United States of America unless said dams are authorized by Act of the Legislature or by a decree of the Public Utilities Commission made after public notice and hearing on petition for such authorization.

Subarticle 1-A: LICENSING OF HYDROELECTRIC FACILITIES

§621. PURPOSE

(REPEALED)

SECTION HISTORY

1979, c. 465, (NEW). 1983, c. 458, §14 (RP).

§622. DEFINITIONS

(REPEALED)

SECTION HISTORY

1979, c. 465, (NEW). 1981, c. 470, §A168 (AMD). 1983, c. 458, §15 (RP).

§623. PROHIBITION

(REPEALED)

SECTION HISTORY

1979, c. 465, (NEW). 1983, c. 458, §16 (RP).

§624. APPLICATION AND NOTICE PROCEDURES **(REPEALED)**

SECTION HISTORY

1979, c. 465, (NEW). 1983, c. 458, §16 (RP).

§625. BOARD ACTION, ADMINISTRATIVE APPEAL AND HEARINGS **(REPEALED)**

SECTION HISTORY

1979, c. 465, (NEW). 1983, c. 453, §7 (AMD). 1983, c. 458, §16 (RP).
1985, c. 506, §A80 (RP).

§626. CRITERIA **(REPEALED)**

SECTION HISTORY

1979, c. 465, (NEW). 1981, c. 470, §A169 (AMD). 1983, c. 458, §17 (RP).

Subarticle 1-B: PERMITS FOR HYDROPOWER PROJECTS

§630. SHORT TITLE

This subarticle may be cited and referred to in proceedings and agreements as the "Maine Waterway Development and Conservation Act." [1983, c. 458, §18 (NEW).]

SECTION HISTORY

1983, c. 458, §18 (NEW).

§631. PURPOSES

1. Findings. The Legislature finds and declares that the surface waters of the State constitute a valuable indigenous and renewable energy resource; and that hydropower development utilizing these waters is unique in its benefits and impacts to the natural environment, and makes a significant contribution to the general welfare of the citizens of the State for the following reasons.

A. Hydropower is the state's only economically feasible, large-scale energy resource which does not rely on combustion of a fuel, thereby avoiding air pollution, solid waste disposal problems and hazards to human health from emissions, wastes and by-products. Hydropower can be developed at many sites with minimal environmental impacts, especially at sites with existing dams or where current type turbines can be used. [1983, c. 458, §18 (NEW).]

B. Like all energy generating facilities, hydropower projects can have adverse effects; in contrast with other energy sources, they may also have positive environmental effects. For example, hydropower dams can control floods and augment downstream flow to improve fish and wildlife habitats, water quality and recreational opportunities. [1983, c. 458, §18 (NEW).]

C. Hydropower is presently the state's most significant indigenous resource that can be used to free our citizens from their extreme dependence on foreign oil for peaking power. [1983, c. 458, §18 (NEW).]

[1983, c. 458, §18 (NEW) .]

2. Policy and purpose. The Legislature declares that hydropower justifies singular treatment. The Legislature further declares that it is the policy of the State to support and encourage the development of hydropower projects by simplifying and clarifying requirements for permits, while assuring reasonable protection of natural resources and the public interest in use of waters of the State. It is the purpose of this subarticle to require a single application and permit for the construction of all hydropower projects and for the reconstruction or structural alteration of certain projects, including water storage projects. The permit application process shall be administered by the Department of Environmental Protection, except that, for hydropower projects within the jurisdiction of the Maine Land Use Planning Commission, the commission shall administer the permit application process under this subarticle.

[1983, c. 458, §18 (NEW); 2011, c. 682, §38 (REV) .]

3. Encouragement of tidal and wave power development. It is the policy of the State to encourage the attraction of appropriately sited development related to tidal and wave energy, including any additional transmission and other energy infrastructure needed to transport such energy to market, consistent with all state environmental standards; the permitting and siting of tidal and wave energy projects; and the siting, permitting, financing and construction of tidal and wave energy research and manufacturing facilities.

[2009, c. 615, Pt. A, §5 (NEW) .]

SECTION HISTORY

1983, c. 458, §18 (NEW). 2009, c. 615, Pt. A, §5 (AMD). 2011, c. 682, §38 (REV).

§632. DEFINITIONS

As used in this subarticle, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 458, §18 (NEW).]

1. Board. "Board" means the Board of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Planning Commission, "board" means the Maine Land Use Planning Commission.

[1983, c. 458, §18 (NEW); 2011, c. 682, §38 (REV) .]

1-A. Commissioner. "Commissioner" means the Commissioner of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Planning Commission, "commissioner" means the Director of the Maine Land Use Planning Commission.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §180 (NEW); 2011, c. 682, §38 (REV) .]

2. Department. "Department" means the Department of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Planning Commission, "department" means the Maine Land Use Planning Commission.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §181 (AMD); 2011, c. 682, §38 (REV) .]

3. Hydropower project. "Hydropower project" means any development that utilizes the flow or other movement of water, including tidal or wave action, as a source of electrical or mechanical power or that regulates the flow of water for the purpose of generating electrical or mechanical power. A hydropower

project development includes all powerhouses, dams, water conduits, turbines or other in-stream power devices, generators, transmission lines, water impoundments, roads and other appurtenant works and structures that are part of the development.

[2007, c. 160, §1 (AMD) .]

SECTION HISTORY

1983, c. 458, §18 (NEW). 1989, c. 890, §§A40, B180, 181 (AMD). 2007, c. 160, §1 (AMD). 2011, c. 682, §38 (REV).

§633. PROHIBITION

1. Permit required. A person may not initiate construction or reconstruction of a hydropower project, or structurally alter a hydropower project in ways that change water levels or flows, without first obtaining a permit from the department.

[2007, c. 160, §2 (AMD) .]

2. Exceptions. This subarticle does not apply to activities for which, prior to the effective date of this Act, a permit or permits have been issued pursuant to any of the following laws: Land use regulation laws, Title 12, sections 681 to 689; stream alteration laws, former sections 425 to 430; great ponds laws, former sections 391 to 394; alteration of coastal wetlands laws, former sections 471 to 478; site location of development laws, sections 481 to 489-E; and small hydroelectric generating facilities laws, this subarticle.

[2011, c. 653, §24 (AMD); 2011, c. 653, §33 (AFF) .]

3. Exemptions. Normal maintenance and repair of an existing and operating hydropower project shall be exempt from this subarticle, provided that:

A. The activity does not involve any dredging or filling below the normal high-water line of any great pond, coastal wetland, river, stream or brook; and [1983, c. 458, §18 (NEW) .]

B. The activity does not involve any dredging or filling on the land adjacent to any great pond, coastal wetland, river, stream or brook such that any dredged spoil, fill or structure may fall or be washed into those waters. [1983, c. 458, §18 (NEW) .]

[1983, c. 458, §18 (NEW) .]

SECTION HISTORY

1983, c. 458, §18 (NEW). 1987, c. 402, §A203 (AMD). 1989, c. 878, §G8 (AMD). 1989, c. 890, §§A40, B182 (AMD). 2007, c. 160, §2 (AMD). 2011, c. 653, §24 (AMD). 2011, c. 653, §33 (AFF).

§634. PERMIT REQUIREMENTS

1. Coordinated permit review. Permits required under the following laws are not required by any state agency for projects reviewed or exempted from review under this subarticle: natural resource protection laws, chapter 3, subchapter I, article 5-A; site location of development laws, chapter 3, subchapter I, article 6; and land use regulation laws, Title 12, chapter 206-A. Notwithstanding section 654, the department may attach reasonable conditions consistent with this subarticle concerning the operation of hydropower projects. The commissioner shall give written notice to the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of any applicant for a permit to construct a dam.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §183 (AMD) .]

2. Application. An application for a permit required by section 633 must be made on forms provided by the commissioner and filed with the commissioner. Public notice of the filing must be made as required by the board.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §183 (AMD) .]

3. Application review. Within 10 working days of receiving a completed application, the commissioner shall notify the applicant of the official date on which the application was accepted.

The commissioner shall circulate the application among the Department of Environmental Protection, Department of Agriculture, Conservation and Forestry, Department of Inland Fisheries and Wildlife, Department of Marine Resources, Department of Transportation, Maine Historic Preservation Commission, Governor's Energy Office, Public Utilities Commission and the municipal officials of the municipality in which the project is located. The Governor's Energy Office and the Public Utilities Commission shall submit written comments on section 636, subsection 7, paragraph F. For projects within the jurisdiction of the Maine Land Use Planning Commission, the director may request and obtain technical assistance and recommendations from the staff of the department. The Commissioner of Environmental Protection shall respond to the requests in a timely manner. The recommendations of the Commissioner of Environmental Protection must be considered by the commission in acting upon a project application.

[2011, c. 655, Pt. MM, §21 (AMD); 2011, c. 655, Pt. MM, §26 (AFF); 2011, c. 657, Pt. W, §5 (REV); 2011, c. 682, §38 (REV) .]

4. Dam removal. A person intending to file an application for a permit to remove an existing dam must attend a preapplication meeting with the department and must hold a public informational meeting prior to filing the application. The preapplication meeting and the public informational meeting must be held in accordance with the department's rules on the processing of applications.

[2003, c. 134, §2 (NEW) .]

SECTION HISTORY

1983, c. 458, §18 (NEW). 1985, c. 772, §2 (AMD). 1989, c. 309, §3 (AMD). 1989, c. 501, §DD46 (AMD). 1989, c. 890, §§A40,B183 (AMD). 2003, c. 134, §2 (AMD). 2011, c. 655, Pt. MM, §21 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §38 (REV) .

§634-A. ADMINISTERING AGENCY

1. Department. The department shall administer the permit process for a hydropower project that:

A. Is located wholly or partly within an organized municipality; or [2009, c. 270, Pt. D, §5 (NEW) .]

B. Uses tidal or wave action as a source of electrical or mechanical power, regardless of the hydropower project's location. [2009, c. 615, Pt. F, §2 (AMD) .]

[2009, c. 615, Pt. F, §2 (AMD) .]

2. Maine Land Use Planning Commission. The Maine Land Use Planning Commission shall administer the permit process for a hydropower project that is located wholly within the State's unorganized and deorganized areas as defined by Title 12, section 682, subsection 1 and that does not use tidal or wave action as a source of electrical or mechanical power.

[2009, c. 615, Pt. F, §3 (AMD); 2011, c. 682, §38 (REV) .]

SECTION HISTORY

2009, c. 270, Pt. D, §5 (NEW). 2009, c. 615, Pt. F, §§2, 3 (AMD). 2011, c. 682, §38 (REV).

§635. DEPARTMENT DECISION

Upon receipt of a properly completed application, the department shall: [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §184 (AMD).]

1. Approval. Approve the proposed project upon such terms and conditions as are appropriate and reasonable to protect and preserve the environment and the public's health, safety and general welfare, including the public interest in replacing oil with hydroelectric energy. These terms and conditions may include, but are not limited to:

A. Establishment of a water level range for the body of water impounded by a hydropower project; [1983, c. 458, §18 (NEW).]

B. Establishment of instantaneous minimum flows for the body of water affected by a hydropower project; and [1983, c. 458, §18 (NEW).]

C. Provision for the construction and maintenance of fish passage facilities. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §184 (AMD).]

When the proposed project involves maintenance, reconstruction or structural alteration at an existing hydropower project and when the proposed project will not alter historic water levels or flows after its completion, the department may impose temporary terms and conditions of approval relating to paragraph A or paragraph B but may not impose permanent terms and conditions that alter historic water levels or flows;

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §184 (AMD) .]

2. Disapproval. Disapprove the proposed project setting forth in writing the reasons for the disapproval; or

[1983, c. 458, §18 (NEW) .]

3. Hearing. Schedule a hearing on the proposed project. Any hearing held under this subsection must follow the notice requirements and procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV. After a hearing is held under this subsection, the department shall make findings of facts and issue an order approving or disapproving the proposed project, as provided in subsections 1 and 2.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §184 (AMD) .]

SECTION HISTORY

1983, c. 458, §18 (NEW). 1983, c. 779, §§2,3 (AMD). 1989, c. 890, §§A40,B184 (AMD).

§635-A. TIME LIMITS FOR PROCESSING APPLICATIONS

Whenever the commissioner receives a properly completed application, the department shall make a decision as expeditiously as possible. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §185 (AMD).]

When the proposed project lies within the jurisdiction of the Maine Land Use Planning Commission, decisions shall be made within 105 working days except that decisions delegated to the director shall be made within 60 working days. Following one extension of up to 45 working days, the director may waive the time limit requirements of this section only at the request of the applicant. [1985, c. 362, §1 (AMD); 2011, c. 682, §38 (REV).]

SECTION HISTORY

1983, c. 779, §4 (NEW). 1985, c. 362, §1 (AMD). 1989, c. 890, §§A40,B185 (AMD). 2011, c. 682, §38 (REV).

§635-B. PROCEDURES FOR WATER QUALITY CERTIFICATION

Issuance of a water quality certificate required under the Federal Water Pollution Control Act, Section 401, is coordinated for the applicant under this subarticle by the Commissioner of Environmental Protection. The issuance of a water quality certificate is mandatory in every case where the department approves an application for a permit or general permit under this subarticle. An application for a tidal energy demonstration project under section 636-A that is accepted as complete by the department serves as an application for water quality certification for the proposed project pursuant to the Federal Water Pollution Control Act, Section 401, 33 United States Code, Section 1341. The department shall issue or deny certification at the same time it approves or disapproves the proposed project. If issued, the certification must state that there is a reasonable assurance that the project will not violate applicable water quality standards. The coordination function of the department with respect to water quality certification does not include any proceedings or substantive criteria in addition to those otherwise required by this subarticle. [2009, c. 270, Pt. D, §6 (AMD).]

SECTION HISTORY

1989, c. 309, §4 (NEW). 1989, c. 890, §§A40,B186 (AMD). 2009, c. 270, Pt. D, §6 (AMD).

§636. APPROVAL CRITERIA

The department shall approve a project when it finds that the applicant has demonstrated that the following criteria have been met. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §187 (AMD).]

1. Financial capability. The applicant has the financial capability and technical ability to undertake the project. In the event that the applicant is unable to demonstrate financial capability, the department may grant the permit contingent upon the applicant's demonstration of financial capability prior to commencement of the activities permitted.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §188 (AMD) .]

2. Safety. The applicant has made adequate provisions for protection of public safety.

[1983, c. 458, §18 (NEW) .]

3. Public benefits. The project will result in significant economic benefits to the public, including, but not limited to, creation of employment opportunities for workers of the State.

[1983, c. 458, §18 (NEW) .]

4. Traffic movement. The applicant has made adequate provisions for traffic movement of all types out of or into the development area.

[1983, c. 458, §18 (NEW) .]

5. Maine Land Use Planning Commission. Within the jurisdiction of the Maine Land Use Planning Commission, the project is consistent with zoning adopted by the commission. This criterion does not apply to any project that uses tidal or wave action as a source of electrical or mechanical power.

[2009, c. 615, Pt. F, §4 (AMD); 2011, c. 682, §38 (REV) .]

6. Environmental mitigation. The applicant has made reasonable provisions to realize the environmental benefits of the project, if any, and to mitigate its adverse environmental impacts.

[1983, c. 458, §18 (NEW) .]

7. Environmental and energy considerations. The advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project based upon the following considerations:

- A. Whether the project will result in significant benefit or harm to soil stability, coastal and inland wetlands or the natural environment of any surface waters and their shorelands; [1989, c. 309, §5 (AMD) .]
- B. Whether the project will result in significant benefit or harm to fish and wildlife resources. In making its determination, the department shall consider other existing uses of the watershed and fisheries management plans adopted by the Department of Inland Fisheries and Wildlife and the Department of Marine Resources; [2009, c. 561, §39 (AMD) .]
- C. Whether the project will result in significant benefit or harm to historic and archeological resources; [1983, c. 458, §18 (NEW) .]
- D. Whether the project will result in significant benefit or harm to the public rights of access to and use of the surface waters of the State for navigation, fishing, fowling, recreation and other lawful public uses; [1983, c. 458, §18 (NEW) .]
- E. Whether the project will result in significant flood control benefits or flood hazards; and [1989, c. 309, §6 (AMD) .]
- F. Whether the project will result in significant hydroelectric energy benefits, including the increase in generating capacity and annual energy output resulting from the project, and the amount of nonrenewable fuels it would replace. [1989, c. 309, §6 (AMD) .]
- G. [1989, c. 309, §7 (RP) .]

The department shall make a written finding of fact with respect to the nature and magnitude of the impact of the project on each of the considerations under this subsection, and a written explanation of their use of these findings in reaching their decision.

[2009, c. 561, §39 (AMD) .]

8. Water quality. There is reasonable assurance that the project will not violate applicable state water quality standards, including the provisions of section 464, subsection 4, paragraph F, as required for water quality certification under the United States Water Pollution Control Act, Section 401. This finding is required for both the proposed impoundment and any affected classified water bodies downstream of the proposed impoundment.

A. Notwithstanding section 464, subsection 2, the department shall reclassify the waters of the proposed impoundment to Class GPA if the department finds:

- (1) There is a reasonable likelihood that the proposed impoundment will thermally stratify;

- (2) The proposed impoundment will exceed 30 acres in surface area;
- (3) The proposed impoundment will not have any upstream direct discharges except cooling water; and
- (4) The proposed impoundment will not violate section 464, subsection 4, paragraph F. [1989, c. 309, §8 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §190 (AMD).]

[1989, c. 309, §8 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §190 (AMD) .]

SECTION HISTORY

1983, c. 458, §18 (NEW). 1985, c. 772, §§3,4 (AMD). 1989, c. 309, §§5-8 (AMD). 1989, c. 890, §§A40,B187- 190 (AMD). 1995, c. 406, §15 (AMD). 1999, c. 401, §BB19 (AMD). 2009, c. 270, Pt. D, §7 (AMD). 2009, c. 561, §39 (AMD). 2009, c. 615, Pt. F, §4 (AMD). 2011, c. 682, §38 (REV).

§636-A. GENERAL PERMIT FOR TIDAL ENERGY DEMONSTRATION PROJECT

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Tidal energy demonstration project" or "project" means a hydropower project that uses tidal action as a source of electrical power and that:

- (1) Has a total installed generating capacity of 5 megawatts or less; and
- (2) Is proposed for the primary purpose of testing tidal energy generation technology, which may include a mooring or anchoring system and transmission line, and collecting and assessing information on the environmental and other effects of the technology. [2009, c. 270, Pt. D, §8 (NEW) .]

[2009, c. 270, Pt. D, §8 (NEW) .]

2. General permit. A person may apply for a general permit for a tidal energy demonstration project in accordance with this section. If a general permit is granted pursuant to this section, an individual permit under section 633 is not required for the construction and operation of a tidal energy demonstration project.

[2009, c. 270, Pt. D, §8 (NEW) .]

3. Application requirements. An applicant for a general permit must file with the department an application that contains the following:

A. Written certification that the applicant has filed an application with the Federal Energy Regulatory Commission for a pilot project license for a proposed tidal energy demonstration project, along with a copy of that application as filed with the commission. The application must contain such information as is required by the Federal Energy Regulatory Commission, including, but not limited to:

- (1) A description of the waters of the State in which the proposed project will be located;
- (2) A description of proposed project facilities and operation;
- (3) Site-specific information regarding the physical environment in which the project is proposed to be located and the anticipated environmental effects of the proposed project;
- (4) A plan for monitoring the environmental effects of the project through the term of the general permit;

- (5) A plan for safeguarding the public and environmental resources through the term of the general permit;
- (6) A plan for removing the project after the termination of the general permit unless the applicant is pursuing a license for a commercial tidal power project at the site; and
- (7) Documentation that, in developing the application, the applicant has consulted with the appropriate local, state and federal resource agencies, as well as local governments, Indian tribes, nongovernmental organizations and members of the public likely to be interested in the project; [2009, c. 270, Pt. D, §8 (NEW) .]

B. Documentation, including certificates of insurance, that the applicant has and will maintain a current general liability policy for the project that covers bodily injury, property damages and environmental damages in an amount considered reasonable by the department in consideration of the scope, scale and location of the project; [2009, c. 270, Pt. D, §8 (NEW) .]

C. Documentation that the applicant has the financial and technical capacity to construct and operate the project as proposed; [2009, c. 270, Pt. D, §8 (NEW) .]

D. A copy of an environmental assessment issued by the Federal Energy Regulatory Commission for the proposed tidal energy demonstration project that includes a finding of "no significant environmental impact" pursuant to the National Environmental Policy Act of 1969, Public Law 91-190, 42 United States Code, Chapter 55, although the department may accept an application as complete for processing prior to the Federal Energy Regulatory Commission's issuance of a finding of no significant environmental impact; and [2013, c. 177, §1 (AMD) .]

E. Written acknowledgement that, in accordance with this section, the department may require the applicant to take remedial action, at the applicant's expense, pursuant to subsection 9, including but not limited to removal of the generating facilities and submerged utility line and termination of the project. [2009, c. 270, Pt. D, §8 (NEW) .]

[2013, c. 177, §1 (AMD) .]

4. Notification. The department shall notify an applicant in writing within 60 days of its acceptance of the application as complete for processing or within 30 days of the Federal Energy Regulatory Commission's issuance of a finding of no significant environmental impact, whichever later occurs, if the department determines that the requirements of this section have not been met. The notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a general permit is deemed to have been granted.

[2013, c. 177, §2 (AMD) .]

5. Fees. Except as otherwise provided by section 344-A, the department shall assess a fee for review of applications filed pursuant to this section as provided by section 352.

[2009, c. 270, Pt. D, §8 (NEW) .]

6. Violation. Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 3 or as subsequently modified with the approval of the department in consultation with agencies and other entities with whom the applicant consulted in accordance with subsection 3, paragraph A, subparagraph (7) is a violation of the general permit.

[2009, c. 270, Pt. D, §8 (NEW) .]

7. General permit term. Except as otherwise provided in subsections 8 and 9, a general permit granted under this section is valid for the term of the pilot project license, including any related annual license, issued by the Federal Energy Regulatory Commission for the tidal energy demonstration project that is the subject of

the general permit. The department may grant one or more extensions of the general permit term to coincide with any approved extension of the term of the pilot project license or any related annual license issued by the Federal Energy Regulatory Commission.

[2009, c. 270, Pt. D, §8 (NEW) .]

8. Surrender. A general permit granted pursuant to this section is deemed to have been surrendered and terminates on the date of approval by the Federal Energy Regulatory Commission of the surrender and termination of the pilot project license or any related annual license for the tidal energy demonstration project that is the subject of the general permit. An applicant may surrender to the department a general permit granted pursuant to this section prior to its expiration pursuant to subsection 7. Subject to conditions regarding project removal under subsection 10, the general permit terminates on the date of its surrender pursuant to this subsection.

[2009, c. 270, Pt. D, §8 (NEW) .]

9. Remedial action. If the department determines, based on the results of monitoring conducted by the applicant or other information, that there is substantial evidence that the project is having a significant adverse effect on a protected natural resource as defined by section 480-B, subsection 8, wildlife, including avian wildlife, bat species, marine mammals, fish or other marine resources or public health or safety, the department shall order the applicant to take action that the department considers necessary to address that adverse effect. Remedial action required by the department may include, but is not limited to:

A. Suspension or modification of project operations; or [2009, c. 270, Pt. D, §8 (NEW) .]

B. Cessation of operations and removal of some or all elements of the project, including but not limited to the generating facilities, if there is no practicable alternative to address the adverse effect. [2009, c. 270, Pt. D, §8 (NEW) .]

[2009, c. 270, Pt. D, §8 (NEW) .]

10. Project removal. Within 60 days of termination of the project pursuant to subsection 7 or 8, unless the applicant is pursuing a license for a commercial tidal power project at the site, and within 60 days of termination of the project pursuant to subsection 9, the applicant shall initiate implementation of the project removal plan provided for under subsection 3, paragraph A, subparagraph (6). If the applicant fails to begin implementing the plan within this 60-day period, the department may take such measures as it considers necessary to initiate and fully implement the plan by drawing on the financial surety provided pursuant to the project removal plan. The applicant's acceptance of the general permit constitutes agreement and consent by the applicant and its heirs, successors and assigns that the department may take such action as necessary to initiate and fully implement the project removal plan. The holder of the project removal funds shall release the project removal funds when the applicant has demonstrated and the department concurs that the project removal plan has been satisfactorily completed or upon written authorization by the department in the event the department implements the plan pursuant to this subsection.

[2009, c. 270, Pt. D, §8 (NEW) .]

11. Local review. A municipality may not enact or enforce any land use, zoning or other standard, conditions or requirement regarding a tidal energy demonstration project located within the municipality that is stricter than the standards, conditions or requirements of this section. The municipality has the burden of proof regarding the location of the project in relation to its boundaries. Any action by the municipality regarding its authorization to site, construct or operate a tidal energy demonstration project must be taken within 60 days of the granting of a general permit under this section.

[2009, c. 270, Pt. D, §8 (NEW) .]

SECTION HISTORY

2009, c. 270, Pt. D, §8 (NEW). 2013, c. 177, §§1, 2 (AMD).

§637. REVIEW OF RULES

Rules adopted by the board pursuant to this subarticle shall be immediately submitted to the joint standing committee of the Legislature having jurisdiction over natural resources for review and may not become effective until 91 days after the adjournment of the next regular session of the Legislature which adjourns after their submission. This committee may report out legislation it deems necessary to clarify legislative intent regarding rules adopted pursuant to this subarticle. [1985, c. 698, §16 (NEW).]

SECTION HISTORY

1985, c. 698, §16 (NEW).

§638. NOTICE OF RELICENSING DEADLINE

By January 15, 2015, and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report describing all pending applications for water quality certification under Section 401 of the federal Clean Water Act for dams located in the State that are subject to the jurisdiction of the Federal Energy Regulatory Commission. The report submitted under this section must include, for each pending application, the filing date of the application, the respective response deadline for the department and a short statement describing the department's plan to address that deadline. The report must also include a list of the licensing or relicensing deadlines for the dams described in this section that are anticipated to occur within 5 years after the date of the report and, if applicable, the department's plan to address each deadline. [2013, c. 545, §1 (NEW).]

SECTION HISTORY

2013, c. 545, §1 (NEW).

Subarticle 1-C: PUBLIC PARTICIPATION IN THE LICENSING AND RELICENSING OF HYDROELECTRIC DAMS

§640. PUBLIC PARTICIPATION

Unless otherwise provided in accordance with regulations promulgated by the Federal Energy Regulatory Commission, for all existing hydropower projects located in Maine currently licensed under the Federal Power Act, and for all proposed hydropower projects requiring a license to operate under the Federal Power Act, all state agencies that review, comment on and consult in the proposed studies, plans, terms and conditions in the course of licensing or relicensing these projects, including the Department of Agriculture, Conservation and Forestry, the Governor's Energy Office, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife and the Department of Marine Resources, shall cooperatively take the following steps to ensure that interested members of the public are informed of, and allowed to participate in, the review and comment process. [2011, c. 655, Pt. MM, §22 (AMD); 2011, c. 655, Pt. MM, §26 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

1. Publication. At the commencement of the consultation, review and comment process, the state agencies involved shall publish notification of this fact, informing the public of the issues anticipated to be involved in the licensing or relicensing process, the timetable for processing of the license and the opportunities the public has to comment on and participate in the process. The notice shall be designed to reach readership both statewide and in the vicinity of the hydropower project, including all persons that have contacted the agencies with an interest in this matter and all potentially interested persons.

[1989, c. 453, §2 (NEW) .]

2. Written notification of status. During the entire consultation process and including the filing of the license application under the Federal Power Act, the state agencies shall inform in writing all members of the public that have indicated an interest in the particular licensing process of the status of that process, including all requirements that the agencies may be placing upon the license applicant. That information shall be provided no less than once every 4 months.

[1989, c. 453, §2 (NEW) .]

3. Public comment. State agencies shall provide meaningful opportunities for public comment on the plans, studies, terms and conditions to be recommended by the agencies for inclusion in the license.

[1989, c. 453, §2 (NEW) .]

4. Release of public information. All information submitted to the agencies by the applicants for a license under the Federal Power Act constitutes a public record pursuant to Title 1, section 402, unless such information is otherwise exempted from public disclosure by state law. Release of this information to members of the public is governed by Title 1, section 408-A.

[2011, c. 662, §24 (AMD) .]

SECTION HISTORY

1989, c. 453, §2 (NEW). 2011, c. 655, Pt. MM, §22 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 662, §24 (AMD) .

Subarticle 2: RIGHTS AND LIABILITIES

§651. MILLDAMS AND CANALS

Any man may on his own land erect and maintain a watermill and dams to raise water for working it, upon and across any stream not navigable; or, for the purpose of propelling mills or machinery, may cut a canal and erect walls and embankments upon his own land, not exceeding one mile in length, and thereby divert from its natural channel the water of any stream not navigable, upon the terms and conditions and subject to the regulations hereinafter expressed.

§652. --DIVERSION OF WATER

Any person, authorized to erect and maintain a watermill and dams on a stream not navigable and to divert the water of such stream from its natural channel by a canal not exceeding one mile in length for the purpose of propelling mills or machinery under section 651, may so divert such waters without said limitation to one mile, provided he is the owner of the land on which the canal is to be located or has the consent of the owners thereof, and provided he is the owner of all riparian rights on said stream between the point of diversion and the point at which the waters are returned to the stream, upon the terms and conditions, and subject to the regulations under this chapter. Under this section, "canal" shall include excavations in the ground and closed flumes, penstocks, pipelines and other appropriate means of conveying water from the point of diversion to the point of return to the stream.

§653. --INJURY TO EXISTING MILL OR CANAL

No such dam shall be erected or canal constructed to the injury of any mill or canal lawfully existing on the same stream; nor to the injury of any mill site, on which a mill or milldam has been lawfully erected and used, unless the right to maintain a mill thereon has been lost or defeated.

§654. --RESTRICTIONS AS TO HEIGHT AND DURATION

The height to which the water may be raised, and the length of time during which it may be kept up in each year, and the quantity of water that may be diverted by such canal, may be restricted and regulated by the verdict of a jury, or report of commissioners, as is provided.

§655. --DAMAGES FOR FLOWING OR DIVERSION; LIMITATIONS

Any person whose lands are damaged by being flowed by a milldam, or by the diversion of the water by such canal, may obtain compensation for the injury, by complaint to the Superior Court in the county where any part of the lands are; but no compensation shall be awarded for damages sustained more than 3 years before the institution of the complaint.

§656. CRANBERRY CULTURE

When dams are erected and maintained on streams not navigable, for the purposes of cranberry culture, and lands are flowed thereby and injured by such flowage, the owners thereof shall proceed for the recovery of damages for such flowage in the same manner as in case of flowage by dams erected and maintained for mill purposes.

§657. ICE CUTTING AND HARVESTING

In order to create ponds for the cutting and harvesting of ice for the market, any persons or corporations may erect and maintain, on their own land, dams on streams not navigable or floatable, but emptying into tidewaters navigable in the winter, and may flow the lands above during November, December, January, February, March and April; but they shall draw off the water to its natural state by the 20th day of May yearly. If any lands are injured by such flowing, the owners thereof have the same remedies as in case of lands flowed by dams erected and maintained for mill purposes; but no right is granted by this section or section 656 to flow any milldam or any mill privilege improved or unimproved. This section shall not be construed as authorizing any persons or corporations to cut ice on any pond created as provided over any area the soil of which such persons or corporations do not own or lease or possess as tenants at will, or by reason of a valid agreement with the owner or lessee or tenant thereof when said owner or lessee is not the State and the pond is not a great pond.

§658. TIMBER REMOVAL ON FLOWED LANDS

When any person or corporation shall have decided to erect a dam across a nonnavigable stream under this chapter or under special authority granted by the Legislature, and shall have filed the specifications required by Title 35, section 11, and it appears that standing timber or other property of value upon the land intended to be flowed will constitute a menace to the safety of such person or corporation or to persons or property upon and along the banks of said stream below the intended location of said dam, the Superior Court shall have jurisdiction, upon complaint of such person or corporation, to authorize said plaintiff to remove and sell such timber or other property and to order the payment to the owner thereof of the gross proceeds of such sale and such further sum, if any, as said court shall deem just. Said court shall require the plaintiff to furnish security for such payment and for an additional penalty not less than double the amount to be received from such sale and shall include in its decree a condition that such additional sum shall be paid to said owner as damages if the dam is not completed and the land flowed within a time to be therein specified. Such time may be extended for good cause shown.

§659. --DAMAGES

Damages caused by flowage of lands from which timber or other property shall have been removed under section 658 shall be assessed as though there had been no severance, and the amount paid for such timber or other property with interest to the date of the judgment shall be credited thereon, provided the owner of the land shall have the right to elect whether his damages shall be assessed for flowage as of the time of taking or of flowing.

Subarticle 3: ACTION FOR DAMAGES

§701. COMPLAINT

The complaint shall contain such a description of the land flowed or injured, and such a statement of the damage, that the record of the case shall show the matter heard and determined in the action.

§702. --SERVICE

The complaint shall be filed and service made as in other actions.

§703. DEFENSES

The owner or occupant of such mill or canal may answer that the plaintiff has no right, title or estate in the lands alleged to be injured; or that he has a right to maintain such dam, and flow the lands, or divert the water for an agreed price, or without any compensation; or any other matter, which may show that the plaintiff cannot maintain the action; but he shall not answer that the land described is not injured by such dam or canal.

§704. TRIAL; COSTS

When any such answer is filed and an issue in fact or in law is joined, it shall be decided as similar issues are decided at common law. If judgment is for the defendant, he shall recover his costs.

§705. APPOINTMENT OF COMMISSIONERS; APPRAISAL OF DAMAGES

If the issue is decided in favor of the plaintiff, or if the defendant is defaulted or does not answer or show any legal objection to the proceedings, the court shall appoint 3 or more disinterested commissioners of the same county, who shall go upon and examine the premises and make a true and faithful appraisal, under oath, of the yearly damages, if any, done to the plaintiff by the flowing of his lands or the diversion of the water described in the complaint, and determine how far the same is necessary, and ascertain and report for what portion of the year such lands ought not to be flowed, or water diverted, or what quantity of water shall be diverted. They shall ascertain, determine and report what sum in gross would be a reasonable compensation for all the damages, if any, occasioned by the use of such dam, and for the right of maintaining and using the same forever, estimated according to the height of the dam and flashboards as then existing. If within 10 days after said report is presented to the court, the owners of said dam or mills elect to pay the damages in gross, the court, where the judgment is entered, shall fix the time in which said damages shall be paid, and if not paid within that time, the owners of the dam or mills lose all benefit of their election, and the annual damages shall stand as the judgment of the court, and, except as otherwise provided, all proceedings shall be in conformity with the other provisions of this chapter.

§706. ASSESSMENT IN GROSS

In any case where annual damages have been determined by a judgment of the court, the owners of the dam or mills may apply to the court by a new complaint, to have the damages assessed in gross, and commissioners may be appointed as in other cases to ascertain, determine and report the damages in gross, and like proceedings shall then be had as are provided in sections 705 and 707.

§707. PAYMENT IN GROSS; BAR

If the damages in gross are paid within the time fixed, the judgment is a bar to any further complaint so long as the dam and flashboards remain at the same height, but if thereafter either is raised, a new complaint may be made by the owner of the lands flowed for any additional damages caused thereby, and the proceedings in said new complaint shall be as hereinbefore prescribed.

§708. COMMISSIONERS' REPORT FOR JURY

If either party requests that a jury may be impaneled to try the cause, the report of the commissioners shall, under the direction of the court, be given in evidence to the jury; but evidence shall not be admitted to contradict it, unless misconduct, partiality or unfaithfulness on the part of some commissioner is shown.

§709. ACCEPTANCE OF COMMISSIONERS' REPORT

If neither party requests a trial by jury, the report of the commissioners may be accepted by the court and judgment rendered thereon.

§710. VERDICT OR REPORT BARS FUTURE ACTION

The verdict of the jury or the report of the commissioners so accepted is a bar to any action brought for such damages. The owner or occupant shall not flow the lands nor divert the water during any portion of the period when prohibited, nor divert the water beyond the quantity allowed by the commissioners or jury.

§711. YEARLY DAMAGES

Such verdict or accepted report of the commissioners, and judgment thereon, shall be the measure of the yearly damages, until the owner or occupant of the lands or the owner or occupant of the mill or canal, on a new complaint to the court and by proceedings as in the former case, obtains an increase or decrease of such damages.

§712. --SECURITY FOR

When any person whose lands are so flowed or from whose lands the water is so diverted files his complaint for ascertaining or increasing his damages, or brings a civil action as provided in section 713, and moves the court to direct the owner or occupant of such mill or canal to give security for the payment of the annual damages, and the court so orders, the owner or occupant refusing or neglecting to give such security shall have no benefit of this chapter; but is liable to be sued for the damages occasioned by such flowing in a civil action.

§713. ACTION FOR UNPAID DAMAGES; LIEN

The party entitled to such annual compensation may maintain a civil action therefor against any person who owns or occupies said mill, or canal and mills supplied thereby, when the action is brought; and shall therein recover the whole sum due and unpaid, with costs; and shall have a lien for such compensation, from the time of the institution of the original complaint, on the mill and milldam, or on the canal and the mill supplied thereby, with the appurtenances and the land under and adjoining them and used therewith, for any sum due not more than 3 years before the commencement of the complaint.

§714. EXECUTION SALE OF LAND AND MILL

The execution on such judgment, if not paid, may at any time within 30 days be levied on the premises subject to the lien. The officer may sell the same at public auction, or so much thereof in common with the residue as is necessary to satisfy the execution, proceeding in giving notice of such sale as in selling an equity of redemption on execution. Such sale is effectual against all persons claiming the premises by any title which accrued within the time covered by the lien.

§715. --REDEMPTION

Any person entitled to the premises may redeem them within one year after the sale by paying to the purchaser, or the person holding under him, the sum paid therefor, with interest at the rate of 12%, deducting therefrom any rents and profits received by such purchaser, or person holding under him; and may have the same process to compel the purchaser to account as he might have had against a purchaser of an equity of redemption.

§716. NEW COMPLAINTS

When either party is dissatisfied with the annual compensation established, a new complaint may be filed, and proceedings had and conducted substantially as in case of an original complaint.

§717. --RESTRICTIONS

No new complaint shall be brought until one month after the payment of the preceding year is due and one month after notice to the other party. The other party may within that time make an offer or tender as is provided.

§718. --OFFER OF INCREASED COMPENSATION

The owner of the mill, dam or canal may within said month offer in writing to the owner of the land injured, an increase of compensation for the future. If the owner of the land does not agree to accept it, but brings a new complaint for the purpose of increasing it, he recovers no costs unless he obtains an increase greater than the offer.

§719. --OFFER TO ACCEPT LESS COMPENSATION

The owner of the land injured may within said month offer in writing to the owner of the mill, dam or canal to accept a reduced compensation for the future. If the owner of the mill, dam or canal declines to pay it, and brings a new complaint to obtain a reduction, he shall recover no costs, unless such compensation is reduced to a sum less than was offered.

§720. TENANTS MAY MAKE OFFERS

Such offers may be made by or to the tenants or occupants of the land, and of the mill and dam, or canal, in like manner and with like effect as if made by or to the owners; but no agreements founded thereon bind the owners, unless made by their consent.

§721. COMMON LAW REMEDY LIMITED

No action shall be sustained at common law for the recovery of damages occasioned by the overflowing of lands or for the diversion of the water as before mentioned, except in the cases provided in this chapter, to enforce the payment of damages after they have been ascertained by process of complaint.

§722. DOUBLE DAMAGES IF RESTRICTIONS VIOLATED

If, after judgment, the restrictions imposed by the report of the commissioners or finding of the jury respecting the flowing or diverting of the waters are violated, the party injured thereby may recover of the wrongdoers double damages for his injury in a civil action.

§723. AGREEMENT OF PARTIES BINDING, IF RECORDED

When an annual compensation, upon the acceptance by one party of an offer made by the other, is established and signed by the owners of the mill, dam or canal, and of the land, and recorded in the office of the clerk of the court in which the former judgment was rendered, with a reference on the record to the former judgment, and to the book where the agreement is recorded, such agreement is as binding as a verdict and judgment on a new complaint.

§724. JUDGMENT NO BAR TO NEW COMPLAINT

A judgment against a plaintiff as not entitled to any compensation is no bar to a new complaint for damages, arising after the former verdict, and for compensation for damages subsequently sustained.

§725. TENDER OF DAMAGES

In case of an original complaint, the defendant may, with the same advantages to himself, tender and bring money into court, or if the issue is decided in favor of the plaintiff, or if the defendant is defaulted or does not answer or show any legal objections to the proceedings, the defendant may, in writing entered of record with its date, offer to be defaulted for a specific sum for the yearly damages or a sum in gross as reasonable compensation for all damages, as in an action at common law. If either is accepted, the judgment has the same effect as if rendered on a verdict. If not accepted within such time as the court orders, it shall not be offered in evidence or have any effect upon the rights of the parties, or the judgment to be rendered except

the costs. If the plaintiff fails to recover a sum greater than the sum tendered or offered, he recovers such costs only as accrued before the offer, and the defendant recovers costs accrued after that time, and his judgment for costs may be set off against the plaintiff's judgment for damages and costs.

§726. NO ABATEMENT BY DEATH

No complaint for so flowing lands or diverting water abates by the death of any party thereto; but it may be prosecuted or defended by the surviving plaintiffs or defendants, or the executors or administrators of the deceased.

§727. IF COMPLAINT ABATES, RIGHTS PRESERVED BY NEW COMPLAINT

If such complaint is abated or defeated for want of form, or if, after a verdict for the plaintiff, judgment is reversed, he may bring a new complaint at any time within one year thereafter and thereon recover the damages sustained during the 3 years preceding the institution of the first complaint, or at any time afterwards.

§728. COMPENSATION OF COMMISSIONERS; COSTS

The court shall award a suitable compensation to be paid to the commissioners, and taxed and recovered by the prevailing party. The prevailing party recovers costs, except where it is otherwise expressly provided.

Article 2: PROTECTION OF WAYS FROM OVERFLOW

§771. FLOWAGE RIGHTS NOT AFFECTED

Nothing in sections 772 to 776 affects any right of flowage or damage therefor.

§772. PETITION TO RAISE WAYS AND ENLARGE WATER VENTS

When the owners of mills carried by the water of a stream, or the owners of water power for operating mills, find or apprehend that the necessary head of water for working or reservoir purposes cannot be obtained, or when their existing rights in respect to the same cannot be exercised without overflowing some highway or town way, they may petition the county commissioners for permission to raise such ways and to enlarge the water vent thereof. Such commissioners shall appoint a time and place for a hearing on the petition and give notice thereof to all parties interested as provided in Title 23, section 2052, and such notice may be proved in the manner therein provided.

§773. PROCEEDINGS OF COMMISSIONERS

On the day appointed, the county commissioners shall meet, examine the premises described in the petition and hear the parties present, and thereupon they shall determine whether said ways shall be raised and the water vents enlarged and to what extent, and shall prescribe the manner in which it shall be done, and what portion of the expenses thereof and the costs of the hearing shall be borne by the petitioners, and what portion, if any, by the town where the way is located.

§774. ALTERATIONS TO BE MADE

If the decision is in favor of the plaintiffs, said commissioners shall direct the town, in writing, to make the alterations prescribed and fix the time within which the same shall be done, and if not done within the time fixed, the same may be done by the plaintiffs. Whether by the town or by the plaintiffs, it shall be done in a faithful manner and to the acceptance of the commissioners. Whichever party makes said alterations has a claim upon the other for the proportion fixed by the commissioners for said other party to pay, and if it is not paid within 30 days after its approval by said commissioners and a demand therefor, it may be recovered in a civil action.

§775. COSTS

If the decision of the county commissioners is against the plaintiffs, they shall pay the costs of the hearing, taxed as in other cases before county commissioners.

§776. APPEALS

Any party aggrieved may appeal from the decision of said commissioners in the same manner and subject to the same conditions as in case of highways.

Article 3: INSPECTION OF DAMS AND RESERVOIRS**§811. APPOINTMENT OF ENGINEER; DUTIES**

(REPEALED)

SECTION HISTORY

1975, c. 771, §422 (AMD). 1977, c. 684, §1 (RPR). 1983, c. 417, §2 (RP).

§812. CORRECTION OF UNSAFE CONDITIONS

(REPEALED)

SECTION HISTORY

1983, c. 417, §3 (RP).

§813. COMPENSATION OF ENGINEER

(REPEALED)

SECTION HISTORY

1977, c. 684, §2 (RPR). 1983, c. 417, §4 (RP).

§814. UTILIZATION OF OTHER STATE AGENCY RESOURCES

(REPEALED)

SECTION HISTORY

1977, c. 684, §3 (NEW). 1983, c. 417, §5 (RP).

Article 3-A: DAM REGISTRATION AND ABANDONMENT**§815. SHORT TITLE**

This article shall be known and may be cited as the "Maine Dam Registration, Abandonment and Water Level Act." [1989, c. 545, §3 (AMD).]

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 545, §3 (AMD).

§815-A. REPORT ON TRANSFER OF FUNCTIONS

(REPEALED)

SECTION HISTORY

1991, c. 528, §E37 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §E37 (NEW). 1993, c. 370, §3 (RP).

§816. LEGISLATIVE FINDINGS AND PURPOSE

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 545, §§4-6 (AMD). 1993, c. 370, §4 (RP).

§817. DEFINITIONS

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 417, §6 (NEW).]

1. Board.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §191 (RP) .]

2. Commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §191 (RP) .]

3. Dam. "Dam" means any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, which impounds or diverts a river, stream or great pond and which is 2 feet or more in height and has an impounding capacity at maximum water storage elevation of 15 acre-feet or more. Any such artificial barrier constructed solely for the purpose of impounding water to allow timber to be floated downstream in a logging operation shall not be considered a dam for the purposes of this article, unless it has been repaired, modified or maintained by or with the knowledge of the owner, lessee or person in control since the discontinuance of its use in connection with logging operations. Any adjacent property, easements, roads, bridges or works not necessary for the operation or maintenance of a dam or access to the dam shall not be included under the provisions of this article.

[1987, c. 118, §1 (AMD) .]

4. Department.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §191 (RP) .]

5. Height. "Height" means, in reference to a dam, the vertical distance in feet from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum capable water storage elevation.

[1983, c. 417, §6 (NEW) .]

6. Littoral proprietor. "Littoral proprietor" means an owner or lessee of property on the shore of a lake impounded by a particular dam.

[1983, c. 417, §6 (NEW) .]

7. Person. "Person" means any individual, firm, association, partnership, corporation, trust, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

[1983, c. 417, §6 (NEW) .]

8. Public safety.

[1989, c. 545, §7 (RP) .]

9. Riparian proprietor. "Riparian proprietor" means an owner or lessee of property on the bank of a river or stream or shore of a pond or other small body of water impounded by a particular dam.

[1983, c. 417, §6 (NEW) .]

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 118, §1 (AMD). 1989, c. 545, §7 (AMD). 1989, c. 890, §§A40,B191 (AMD).

§818. MISCELLANEOUS

1. Other laws. Except as specifically provided in this Article, nothing in this Article shall be construed as relieving any person from duties, responsibilities or liabilities imposed by any other statute, regulation, municipal ordinance or any rule of law.

[1983, c. 417, §6 (NEW) .]

2. Rights of others. Except as specifically provided in this Article, nothing in this Article shall be construed as denying any person any rights he may have under any other statute, regulation, municipal ordinance or any rule of law.

[1983, c. 417, §6 (NEW) .]

3. Other powers. No provision of this article may be construed as limiting the powers of the Maine Emergency Management Agency under Title 37-B, chapter 24.

[2001, c. 460, §4 (AMD) .]

4. Damages. No action may be brought against the State, the board, the commissioner or their agents or employees for the recovery of damages caused by any order of the board or commissioner or by the partial or total failure of any dam or through the operation of any dam upon the ground that the State, the board, the commissioner or their agents or employees are liable by virtue of any order or determination of the board or commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §192 (AMD) .]

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 370, §23 (AMD). 1987, c. 402, §A204 (AMD). 1987, c. 769, §A180 (AMD). 1989, c. 890, §§A40,B192 (AMD). 2001, c. 460, §4 (AMD).

Subarticle 1: INSPECTION

§820. JURISDICTION

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§821. INSPECTION OF DAMS

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 118, §2 (AMD). 1989, c. 545, §8 (RP).

§822. INSPECTION PETITION AND ORDER

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§823. FORMAL INSPECTION AND HEARING; DECISION

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 118, §§3-6 (AMD). 1989, c. 545, §8 (RP).

§824. INFORMAL INSPECTION

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 118, §§7,8 (AMD). 1989, c. 545, §8 (RP).

§825. ACCESS AND NOTIFICATION

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 118, §9 (RPR). 1989, c. 545, §8 (RP).

§826. REIMBURSEMENT FOR INSPECTION EXPENSES

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§827. UTILIZATION OF OTHER STATE AGENCY RESOURCES

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§828. REGULATIONS

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

§829. TRANSITIONAL PROVISIONS

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 545, §8 (RP).

Subarticle 2: REGISTRATION

§830. REGISTRATION OF OWNERSHIP

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 118, §10 (AMD). 1989, c. 890, §§A40,B193, 194 (AMD). 1991, c. 528, §§E38,39 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§E38,39 (AMD). 1993, c. 370, §5 (RP).

§831. NOTICE OF TRANSFER OR DESTRUCTION

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 890, §§A40,B195 (AMD). 1993, c. 370, §6 (RP).

Subarticle 3: ABANDONMENT

§835. ABANDONMENT

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1993, c. 370, §7 (RP).

§836. AUTHORIZED ABANDONMENT

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1993, c. 370, §7 (RP).

§837. AWARDS OF NEW OWNERSHIP

(REPEALED)

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 737, §§C92,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 890, §§A40,B196 (AMD). 1993, c. 370, §8 (RP).

Subarticle 4: WATER LEVELS

§840. ESTABLISHMENT OF WATER LEVELS

1. Power. The commissioner may on the commissioner's own motion and shall, at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is not:

A. Operating with a license or exemption issued by the Federal Energy Regulatory Commission or determined by the Federal Energy Regulatory Commission to be subject to the jurisdiction of that commission; [1995, c. 630, §2 (AMD).]

B. [1995, c. 630, §2 (RP).]

C. [1995, c. 630, §2 (RP).]

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 489-E; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams; [2011, c. 653, §25 (AMD); 2011, c. 653, §33 (AFF).]

E. A dam regulated by one or more municipalities by ordinance or interlocal agreement pursuant to Title 30-A, chapter 187, subchapter VI; or [1995, c. 630, §2 (AMD).]

F. Regulated by the International Joint Commission. [1995, c. 630, §2 (NEW).]

Notwithstanding the provisions of this subsection, after an order establishing a water level regime or minimum flow requirement has been issued pursuant to this section or former Title 12, section 304, the commissioner is not required to hold a hearing to establish a new water level regime or minimum flow requirement for the same body of water in response to a petition from littoral or riparian proprietors unless the commissioner determines that there has been a substantial change in conditions or other circumstances materially affecting the impact of water levels and minimum flows on the public and private resources identified in subsection 4 since the order was issued.

[2011, c. 653, §25 (AMD); 2011, c. 653, §33 (AFF) .]

2. Notice. The commissioner shall provide written notice of any hearing held pursuant to this section to the owner, lessee or person in control, if known, of any dam on the body of water and to any petitioner who has petitioned for a hearing with respect to the body of water. The commissioner shall give public notice of the hearing under Title 5, section 9052 and shall also file notice of the hearing in the municipal office of any municipality and in the clerk's office of any county in which the body of water is located.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §198 (AMD) .]

3. Conduct of hearing. The hearing shall follow the procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV and the procedures specified in this section.

[1983, c. 417, §6 (NEW) .]

4. Evidence. At the hearing, the commissioner shall solicit and receive testimony, as provided by Title 5, section 9057, for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water. The testimony is limited to:

A. The water levels necessary to maintain the public rights of access to and use of the water for navigation, fishing, fowling, recreation and other lawful public uses; [1983, c. 417, §6 (NEW) .]

B. The water levels necessary to protect the safety of the littoral or riparian proprietors and the public; [1983, c. 417, §6 (NEW).]

C. The water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality; [1989, c. 323, §2 (AMD).]

D. The water levels necessary to prevent the excessive erosion of shorelines; [1983, c. 417, §6 (NEW) .]

E. The water levels necessary to accommodate precipitation and run off of waters; [1983, c. 417, §6 (NEW) .]

F. The water levels necessary to maintain public and private water supplies; [1983, c. 417, §6 (NEW) .]

G. The water levels and flows necessary for any ongoing use of the dam to generate or to enhance the downstream generation of hydroelectric or hydromechanical power; and [1983, c. 417, §6 (NEW) .]

H. The water levels necessary to provide flows from any dam on the body of water to maintain public access and use, fish propagation and fish passage facilities, fish and wildlife habitat and water quality downstream of the body of water. [1983, c. 417, §6 (NEW) .]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §199 (AMD) .]

5. Order. Based on the evidence solicited at the hearing, the commissioner shall make written findings and issue an order to the owner, lessee or person in control of the dam establishing a water level regime for the body of water impounded by the dam and, if applicable, minimum flow requirements for the dam. The order must, insofar as practical, require the maintenance of a stable water level, but must include provision for variations in water level to permit sufficient drawdown of the body to accommodate precipitation and runoff of surface waters, minimum flow requirements and to otherwise permit seasonal and other necessary fluctuations in the water level of the body of water in order to protect public health, safety and welfare and the public and private resources identified in subsection 4. The commissioner shall deliver a copy of the order to the owner, lessee or person in control of the dam, the municipal officers of any municipality in which the dam or the body of water it impounds is located and each petitioner, if any, and shall file a copy of the order in the registry of deeds in the county where the dam is located.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §200 (AMD) .]

6. Appeal. The commissioner's order may be appealed to the board. The appeal is governed by the provisions of section 341-D, subsection 4.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §201 (NEW) .]

7. Applicability beginning October 1, 2015.

[2015, c. 264, §4 (NEW); T. 38, §840, sub-§7 (RP) .]

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 118, §11 (AMD). 1987, c. 402, §A205 (AMD). 1989, c. 323, §§1-3 (AMD). 1989, c. 569, §1 (AMD). 1989, c. 890, §§B197-201 (AMD). 1989, c. 890, §A40 (AFF). 1993, c. 370, §§9, 10 (AMD). 1995, c. 630, §2 (AMD). 1999, c. 243, §20 (AMD). 2011, c. 653, §25 (AMD). 2011, c. 653, §33 (AFF). 2015, c. 264, §4 (AMD).

§841. MAINTENANCE OF DAMS

1. Prohibition. After issuance of an order under section 840, subsection 5, establishing a water level regime for any body of water, no owner, lessee or person in control of any dam impounding the body of water, nor any subsequent transferee, may operate or maintain the dam or cause or permit the dam to be operated or maintained in any manner that will cause the level of water to be higher or lower than that permitted by order of the board or commissioner or to otherwise violate the terms of the order of the board or commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §202 (AMD) .]

2. Exception. An owner, lessee or person in control of a dam may not be in violation of subsection 1 when the water level fluctuation not permitted by the order was caused by unforeseeable and unpredictable meteorological conditions or operating failures of the dam or any associated equipment or by valid order of federal, state or local authorities, including an order issued pursuant to Title 37-B, section 1114, subsection 2, and when the person could not have avoided the fluctuation by promptly undertaking all reasonably available steps to regulate water flow through or over any dam under the person's control. The burden of proof is on the owner, lessee or person in control of the dam to demonstrate the applicability of this subsection.

[2001, c. 460, §5 (AMD) .]

3. Enforcement. The commissioner or any littoral or riparian proprietor may commence an action to enjoin the violation of any provision of this subarticle. The commissioner may enforce any order issued under section 840, subsection 5 or subsection 6 by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order.

The violation of any order issued under section 840, subsection 5 or subsection 6, is punishable by a forfeiture of not less than \$100 and not more than \$10,000. Each day of violation is considered a separate offense.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §202 (AMD) .]

4. Unregistered dam.

[1993, c. 370, §11 (RP) .]

5. Appeal. Any person aggrieved by an order of the board or commissioner under section 840, subsection 5 or 6 may appeal to the Superior Court under Title 5, chapter 375, subchapter VII.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §202 (AMD) .]

SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 118, §12 (AMD). 1989, c. 890, §§A40,B202 (AMD). 1993, c. 370, §11 (AMD). 2001, c. 460, §5 (AMD).

§842. TRANSITION PROVISION

All orders of the State Soil and Water Conservation Commission or the Commissioner of Agriculture, Food and Rural Resources issued under former Title 12, section 304 continue in effect and must be enforced by the commissioner until they expire or are rescinded or amended under this subarticle. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §203 (AMD).]

SECTION HISTORY

1983, c. 417, §6 (NEW). 1989, c. 890, §§A40,B203 (AMD).

§843. MUNICIPAL AUTHORITY

The commissioner shall review an ordinance submitted pursuant to Title 30-A, chapter 187, subchapter VI for consistency with this article. If the commissioner determines that the ordinance includes all substantive provisions of this article and includes all provisions required by Title 30-A, chapter 187, subchapter VI, the commissioner shall approve that municipality for authority to establish water level regimes and minimum flow requirements for impoundments and dams. [1993, c. 370, §12 (NEW).]

SECTION HISTORY

1993, c. 370, §12 (NEW).

§844. DAM REPAIR AND RECONSTRUCTION FUND**(REPEALED)**

SECTION HISTORY

1999, c. 782, §1 (NEW). 2001, c. 460, §6 (RP).

Article 4: MILLS AND THEIR REPAIR**§851. MEETING OF MILL OWNERS; CALL; OBJECT**

When an owner of a mill or of the dam necessary for working the mill thinks it necessary to rebuild or repair it in whole or in part, the owner may apply in writing to a notary public in the county where the mill is situated, or if partly in 2 counties, to a notary public in either, to call a meeting of the owners, stating the object, time and place of the meeting. The notary may issue a warrant for the purpose, directed to the owner, which must be published in some newspaper printed in the county, if any, 3 weeks successively, the last publication to be not less than 10 nor more than 30 days before the meeting; or a true copy of the warrant may be delivered to each of said owners or left at the owner's last known address; and either notice is binding on all the owners. [1995, c. 227, §4 (AMD).]

SECTION HISTORY

1995, c. 227, §4 (AMD).

§852. OWNERS OF 50% OR MORE MAY REPAIR OR REBUILD

At such meeting, whether all the owners attend or not, the owners in interest of at least 1/2 of such mill or dam may rebuild or repair so far as to make them serviceable; and shall be reimbursed out of said mill or its profits what they advanced therefor beyond their proportions, with interest in the meantime.

§853. REIMBURSEMENT

If they are not reimbursed by the profits of the mill or paid by the other owners within 6 months after the work is completed, they may charge 1% a month on the amount advanced, from the end of 6 months until so reimbursed. If a delinquent owner dies or alienates his interest in the premises, the advancing owners have a continuing lien thereon for reimbursement. No special contract made by the owners respecting the building or repair of such mill or dam is hereby affected.

§854. MINORS AND PERSONS WITH QUALIFIED INTERESTS

Where any part of such mill or dam at the time of meeting and notice is owned by minors, tenants by curtesy, in tail, for life or years, or by mortgagor or mortgagee, the guardians of such minors, such tenant, mortgagor or mortgagee shall be deemed, for the purposes of sections 851 to 892, the proprietors thereof, and shall be notified, vote and contribute accordingly. All advances so made by them, if not paid, may be recovered in a civil action, with interest.

Article 5: GRIST MILLS**§891. SCALES FOR WEIGHING GRAIN; ORDER OF GRINDING**

The owner or occupant of every grist mill shall keep scales and weights therein to weigh corn, grain and meal, when required. He shall well and sufficiently grind as required, according to the nature, capacity and condition of his mill, all grain brought to his mill for that purpose and in the order in which it shall be received. For neglecting or refusing to weigh the same when required, or failing to grind the same in the order received, or for taking more than lawful toll, he commits a civil violation for which a forfeiture of not less than \$10 nor more than \$50 shall be adjudged for each violation. This section shall not be so construed as to preclude the right of any owner or occupant of any mill to enter into any mutual agreement with any customer

or customers as to the order in which the grain of such customers shall be received and ground, made at the time said customer or customers shall bring his or their grain to the mill for the purpose of being ground.
[1977, c. 696, §346 (AMD).]

SECTION HISTORY

1977, c. 696, §346 (AMD).

§892. TOLLS

The toll for grinding, cleansing and bolting all kinds of grain shall not exceed 1/16 part thereof.

Article 6: RELEASE FROM DAM OWNERSHIP AND WATER LEVEL MAINTENANCE

§901. PETITION FOR RELEASE; PUBLIC NOTICE

1. Petition. The owner of a dam that is not licensed or exempted from licensure by the Federal Energy Regulatory Commission may petition the department to initiate proceedings for release from dam ownership or water-level maintenance under this article. The petition must include the following information:

- A. The name, address and phone number of the dam owner; [1995, c. 630, §3 (NEW).]
- B. The location of the dam; [1995, c. 630, §3 (NEW).]
- C. A plan of the dam and brief descriptions of the condition of the dam and recent operation of the dam; and [1995, c. 630, §3 (NEW).]
- D. Any other reasonable information the department determines necessary to implement this article.
[1995, c. 630, §3 (NEW).]

The department shall notify the owner within 15 days of receipt of the petition if the department determines that the petition does not comply with the requirements of this section. If notice is not sent within 15 days, the petition is deemed to comply.

[1995, c. 630, §3 (NEW) .]

2. Public notice. Not more than 30 days before filing a petition, the dam owner shall publish notice of intent to file a petition under this article at least once in a newspaper circulated in the area in which the dam and impoundment are located. The dam owner shall notify by certified mail the persons listed in section 902, subsection 3, paragraphs B, C and D. The dam owner shall notify abutting property owners as provided in subsection 3. The dam owner shall also make a good faith effort to notify local, regional and statewide private organizations interested in fisheries, wildlife, conservation, recreation and environmental issues whose interests may be affected by the dam.

[1995, c. 630, §3 (NEW) .]

3. Notice to property owners. The dam owner shall send notice of the intent to file a petition by first class mail to persons who own property abutting the dam site, water impounded by the dam or waterways immediately downstream from the dam. If the dam owner chooses to meet the obligation to consult with property owners by holding a public meeting, as described in section 902, subsection 1, the dam owner shall include notice of the public meeting in the notice provided pursuant to this subsection.

[1995, c. 630, §3 (NEW) .]

The dam owner may request that a municipality send the required notice, but the dam owner is responsible for providing the notice if the municipality fails to do so. At the request of a dam owner, a municipality shall send notice of a petition filed under this article by first class mail to persons who own property in that municipality and who must be notified as provided in this subsection. The dam owner shall

provide a sufficient number of copies of the notice to the municipality and shall reimburse the municipality for all costs incurred in providing the notice. County commissioners and tribal governments have the same obligation as municipalities under this subsection to send notice to persons who own property within their respective jurisdictions. [1995, c. 630, §3 (NEW).]

SECTION HISTORY

1995, c. 630, §3 (NEW).

§902. CONSULTATION PROCESS

1. Consultation required. Within 180 days of filing a petition pursuant to section 901, a dam owner shall consult with the persons and entities listed in subsection 3 to determine whether any of them wish to assume ownership of the dam. During consultation with each person or group of persons, the owner shall explain the process set forth in this article and shall inform the person or group that the department may issue an order requiring release of the water impounded by the dam if a new owner is not located. A dam owner may meet the obligation to consult with property owners by holding a public meeting and consulting with the persons who appear at that meeting, as long as notice has been sent to each property owner as required in section 901.

[1995, c. 630, §3 (NEW) .]

1-A. Extension of consultation period. The consultation period under subsection 1 must be extended for an additional 180 days if:

A. A municipality in which the dam or impoundment is located applies to the department for an extension and demonstrates that the municipality needs additional consultation time to facilitate an agreement for municipal ownership of the dam; or [1997, c. 789, §1 (NEW); 1997, c. 789, §5 (AFF).]

B. The dam owner applies to the department for an extension. [1997, c. 789, §1 (NEW); 1997, c. 789, §5 (AFF).]

The consultation period under subsection 1 may not be extended for more than 180 days regardless of the number of applications for extension under this subsection.

[2013, c. 2, §48 (COR) .]

2. Timing of consultation. Consultation prior to the filing of a petition meets the requirements of subsection 1 only if the dam owner, during the consultation, disclosed an intent to file a petition under this article and provided the information required in subsection 1.

[1995, c. 630, §3 (NEW) .]

3. Parties to consultation. The following persons must be consulted as provided in subsection 1:

A. Individuals and groups of persons, such as lake associations, who own property abutting the dam site, the water impounded by the dam or the waterway immediately downstream from the dam; [1995, c. 630, §3 (NEW).]

B. The Commissioner of Inland Fisheries and Wildlife, the Commissioner of Agriculture, Conservation and Forestry and the Director of the Maine Emergency Management Agency; [1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §6 (REV).]

C. The municipal officers of any municipality and the county commissioners of any unorganized area in which the dam or impoundment is located; and [1995, c. 630, §3 (NEW).]

D. Representatives of the tribal governments of Indian tribes or nations in whose territory a dam or impoundment is located. [1995, c. 630, §3 (NEW).]

[1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §6 (REV) .]

4. Report on notice compliance. The dam owner shall file a report with the department within 180 days of filing a petition that includes:

A. Evidence that the owner complied with the notice requirements set forth in section 901; and [1997, c. 789, §2 (AMD); 1997, c. 789, §5 (AFF).]

B. Names and addresses of persons notified under section 901. [1997, c. 789, §2 (AMD); 1997, c. 789, §5 (AFF).]

C. [1997, c. 789, §5 (AFF); 1997, c. 789, §2 (RP).]

[1997, c. 789, §2 (AMD); 1997, c. 789, §5 (AFF) .]

4-A. Report on consultation process. The dam owner shall file a report with the department within 180 days of filing a petition or before the conclusion of an extension to the consultation period granted pursuant to subsection 1-A that includes:

A. Names and addresses of parties consulted in accordance with this section; and [1997, c. 789, §3 (NEW); 1997, c. 789, §5 (AFF).]

B. The results of the consultations and whether a new owner has been located. [1997, c. 789, §3 (NEW); 1997, c. 789, §5 (AFF).]

[1997, c. 2, §64 (COR) .]

5. Evaluation of report. If the department determines, after reviewing the report, that the dam owner has not complied with the requirements of section 901 or this section, the department shall allow the dam owner a reasonable period of time to correct the deficiency. The department shall reject the petition if:

A. The deficiency has not been corrected within the specified time period; or [1995, c. 630, §3 (NEW) .]

B. The department finds that a person was willing to assume ownership of the dam but the dam owner refused to transfer the property because that person refused to pay compensation, other than costs, for the transfer. [1995, c. 630, §3 (NEW).]

[1995, c. 630, §3 (NEW) .]

SECTION HISTORY

1995, c. 630, §3 (NEW). RR 1997, c. 2, §64 (COR). 1997, c. 789, §§1-3 (AMD). 1997, c. 789, §5 (AFF). 2011, c. 657, Pt. W, §6 (REV). RR 2013, c. 2, §48 (COR).

§903. ASSESSMENT OF PUBLIC VALUE OF DAM

1. Notification of agencies. If a new owner was not located during the consultation process and the department has not rejected the petition, the department shall immediately notify the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry and the Maine Emergency Management Agency that an assessment of public value for the dam may be required.

[1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

2. Evaluation of fisheries and wildlife value. Within 60 days of receiving notice under subsection 1, the Department of Inland Fisheries and Wildlife shall review the following factors and determine whether the best interest of the public requires that department to assume ownership of the dam:

- A. The cost of maintaining the dam; [1995, c. 630, §3 (NEW).]
- B. The value to fisheries and wildlife of maintaining the dam; and [1995, c. 630, §3 (NEW).]
- C. The value to fisheries and wildlife of releasing water from the dam. [1995, c. 630, §3 (NEW).]

The Department of Inland Fisheries and Wildlife shall notify the department of its determination. If the Department of Inland Fisheries and Wildlife determines, after considering these factors, that the best interest of the public requires it to assume ownership of the dam, the department shall issue an order directing the dam owner to transfer the dam to the Department of Inland Fisheries and Wildlife within a reasonable period of time. If the Department of Inland Fisheries and Wildlife determines that it will not assume ownership, the department shall notify the Department of Agriculture, Conservation and Forestry.

[1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

3. Evaluation of public recreational value. Within 60 days of receiving notice under subsection 2, the Department of Agriculture, Conservation and Forestry shall review the following factors and determine whether the best interest of the public requires that department to assume ownership of the dam:

- A. The cost of maintaining the dam; [1995, c. 630, §3 (NEW).]
- B. The value to public recreation, conservation and public use of maintaining the dam; and [1995, c. 630, §3 (NEW).]
- C. The value to public recreation, conservation and public use of releasing water from the dam. [1995, c. 630, §3 (NEW).]

The Department of Agriculture, Conservation and Forestry shall notify the department of its determination. If the Department of Agriculture, Conservation and Forestry determines, after considering these factors, that the best interest of the public requires it to assume ownership of the dam, the department shall issue an order directing the dam owner to transfer the property to the Department of Agriculture, Conservation and Forestry within a reasonable period of time. If the Department of Agriculture, Conservation and Forestry determines that it will not assume ownership of the dam, the department shall notify the Maine Emergency Management Agency.

[1995, c. 630, §3 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

4. Evaluation of public safety value. Within 60 days of receipt of notice under subsection 3, the Maine Emergency Management Agency shall review the following factors and determine whether the best interest of the public requires that agency to assume ownership of the dam:

- A. The cost of maintaining the dam; [1995, c. 630, §3 (NEW).]
- B. The value to public safety, particularly flood protection, of maintaining the dam; and [1995, c. 630, §3 (NEW).]
- C. The value to public safety, particularly flood protection, of releasing water from the dam. [1995, c. 630, §3 (NEW).]

The Maine Emergency Management Agency shall notify the department of its determination. If that agency determines, after considering these factors, that the best interest of the public requires it to assume ownership of the dam, the department shall issue an order directing the dam owner to transfer ownership of the dam to the Maine Emergency Management Agency within a reasonable period of time.

[1995, c. 630, §3 (NEW) .]

SECTION HISTORY

1995, c. 630, §3 (NEW). 2011, c. 657, Pt. W, §5 (REV).

§904. NOTICE OF FAILURE TO LOCATE NEW OWNER

If a new owner has not been located through the process set forth in sections 902 and 903, the department shall provide notice that a new owner for the dam has not been located and that the department intends to issue an order requiring the dam owner to release water from the dam in accordance with section 905. Notice must be sent by certified mail to each municipality in which the dam and impoundment are located, to county commissioners when the dam and impoundment are located in unorganized territory and to tribal governments when the dam and impoundment are located on tribal territory. The department shall also publish notice of its intent to issue the order at least once in a newspaper circulated in the area in which the dam and impoundment are located. [1995, c. 630, §3 (NEW) .]

SECTION HISTORY

1995, c. 630, §3 (NEW).

§905. ORDER FOR RELEASE OF WATER

1. Order. Not earlier than 30 days after providing notice as required in section 904, the department shall issue an order to the dam owner to release water from the dam in a manner that minimizes the impact of the release, including requirements for mitigation as appropriate. If the department receives a petition requesting additional time to negotiate assumption of ownership of the dam and the dam owner agrees, the department may delay issuance of the order for an additional period agreed to by the dam owner and the petitioners.

[1995, c. 630, §3 (NEW) .]

2. Impact of order. An order issued under this article does not supersede any property right granted by deed or other legal instrument. An order issued under this article supersedes an order issued under section 840.

[1995, c. 630, §3 (NEW) .]

SECTION HISTORY

1995, c. 630, §3 (NEW).

§906. PROPERTY TRANSFER PROVISIONS

1. Compensation. A dam owner is not prohibited from requesting compensation for the transfer of a dam pursuant to this article. The department may not issue a water release order pursuant to section 905 to a dam owner who has refused to transfer the dam to a person willing to assume ownership of the dam because that person refused to compensate the dam owner for the property. The department may not refuse to issue the order if the dam owner requested only payment or a share in payment of the costs of transfer.

[1995, c. 630, §3 (NEW) .]

2. Property rights transferred. When a dam is transferred pursuant to this article, the dam owner shall transfer all property rights necessary to maintain and operate the dam, to the extent owned by the dam owner. Those property rights include title to the dam and land under the dam, title to equipment and other personal property normally located at the dam site, flowage rights and access rights.

[1995, c. 630, §3 (NEW) .]

SECTION HISTORY

1995, c. 630, §3 (NEW) .

§907. RIGHT TO WITHDRAW PETITION

A dam owner may at any time withdraw a petition filed under this article. [1995, c. 630, §3 (NEW) .]

SECTION HISTORY

1995, c. 630, §3 (NEW) .

§908. MUNICIPAL ACTIONS ON DAM OWNERSHIP

The municipal legislative body, as defined in Title 30-A, section 2001, of any municipality notified pursuant to section 901, subsection 2 must consider and act on the issue of dam ownership at a public meeting. The meeting must be held no later than 60 days after the municipal officers receive notice under section 901. County commissioners notified under section 901 must also hold a public meeting to act on the issue of dam ownership not later than 60 days after receiving notification. [1995, c. 630, §3 (NEW) .]

SECTION HISTORY

1995, c. 630, §3 (NEW) .

§909. TECHNICAL ASSISTANCE

To the extent existing resources are available, when one or more municipalities seek ownership of a dam, the Department of Agriculture, Conservation and Forestry may provide grants and technical assistance to the participating municipality or municipalities or to regional planning organizations. [2011, c. 655, Pt. JJ, §34 (AMD); 2011, c. 655, Pt. JJ, §41 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

SECTION HISTORY

1997, c. 789, §4 (NEW). 1997, c. 789, §5 (AFF). 2011, c. 655, Pt. JJ, §34 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §5 (REV) .

Subchapter 2: WATER STORAGE RESERVOIRS

§931. CREATION; RIGHT TO FLOW LAND; DAMAGES

Any person, firm or corporation which may be entitled to the rights and benefits provided for in this chapter is authorized and empowered to build, maintain and operate dams and other necessary works and structures, including side dams, embankments, ditches and drains, on lands owned or leased by them for the purpose of creating and maintaining water storage reservoirs or basins; to raise the level of the waters in such storage reservoirs or basins by augmenting the supply of stored water from sources other than the natural drainage area by means of pumping or otherwise; to retain and discharge said stored water; to build, maintain and operate pipes, conduits, penstocks, tunnels and canals for the purpose of augmenting and discharging said stored water for use by such persons, firms or corporations for working their water mill or mills. Such

persons, firms or corporations are authorized and empowered to flow such lands as may be necessary to carry out the purposes of this section, and damages caused by the flowing of such lands by means of said dams, other works and structures shall be ascertained and determined in the manner as prescribed in this chapter.

§932. EMINENT DOMAIN; ASSESSMENT OF DAMAGES

Any person, firm or corporation authorized and empowered to build, maintain and operate pipes, conduits, penstocks, tunnels and canals under section 931 is further authorized and empowered to exercise the right of eminent domain by taking and holding as for public uses in the manner and subject to the limitations prescribed in Title 35-A, section 6502, such lands and rights-of-way as such person, firm or corporation may require for such purposes when the water which will be stored, retained and discharged through the use of such pipes, conduits, penstocks, tunnels and canals will be devoted to public uses. All proceedings relating to damages caused by the building, maintaining and operating of said pipes, conduits, penstocks, tunnels and canals shall be ascertained and determined in the same manner as prescribed in Title 35-A, sections 6503 to 6512. [1987, c. 141, Pt. B, §37 (AMD).]

SECTION HISTORY

1987, c. 141, §B37 (AMD).

§933. AUTHORIZATION REQUIRED

Any person, firm or corporation authorized and empowered to augment stored water by pumping or otherwise under section 931 and acquire by eminent domain for public uses, lands and rights-of-way for pipes, conduits, penstocks, tunnels and canals under section 932 is authorized and empowered to exercise the rights and benefits under this chapter but only when such person, firm or corporation shall have received the necessary authority by legislative Act.

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